

KAMALA D. HARRIS
Attorney General of California
JAY C. RUSSELL
Supervising Deputy Attorney General
DANIELLE F. O'BANNON
Supervising Deputy Attorney General
SHARON A. GARSKE
Deputy Attorney General
State Bar No. 215167
1515 Clay Street, 20th Floor
Oakland, CA 94612
Telephone: (510) 622-4464
Fax: (510) 622-2270
E-mail: Sharon.Garske@doj.ca.gov
Attorneys for Defendants

PRISON LAW OFFICE
DONALD SPECTER – 83925
SARA NORMAN – 189536
RANA ANABTAWI – 267073
ALISON HARDY - 135966
1917 Fifth Street
Berkeley, California 94710
Telephone: (510) 280-2621

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DERRICK CLARK, et al.,

Plaintiffs,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

C 96-1486 CRB

**STIPULATION AND ~~PROPOSED~~
ORDER RE: REVISIONS TO
REMEDIAL PLAN**

The parties propose to enter into the following stipulation to revise the Remedial Plan as amended on March 1, 2002:

RELEVANT BACKGROUND

Under the Settlement Agreement entered into by the parties in this case, the parties adopted a Remedial Plan which governs, in general, the identification of inmates with developmental disabilities, and the services Defendants are to provide to inmates in the Developmental Disability Program (DDP).

Presently, under the Remedial Plan, if an inmate in the DDP is found guilty of a rules violation, the Chief Disciplinary Officer must review the completed Rules Violation Report in

1 accordance with California Code of Regulations, Title 15, Section 3312. Then the Chief
2 Disciplinary Officer must consult with the DDP clinician regarding the findings and disposition
3 of the hearing before taking action. Remedial Plan, *Amended March 1, 2002* at 50. The clinician
4 must provide input as to the effectiveness of the disposition in correcting the inmate's behavior.
5 *Id.* Both the Chief Disciplinary Officer and the clinician must sign the completed Rules Violation
6 Report. *Id.* By signing this form, the DDP clinician does not endorse the rules violation
7 disposition, but only acknowledges the consultation. *Id.* The need for the Chief Disciplinary
8 Officer to consult with clinicians concerning the rules violation disposition for inmates in the
9 DDP must be incorporated into applicable lesson plans, post orders, and operational procedures at
10 designated institutions. *Id.*

11 **I. ELIMINATION OF POST- RULES VIOLATION CONSULTATION BETWEEN THE CHIEF**
12 **DISCIPLINARY OFFICER AND DDP CLINICIAN AND ADOPTION OF *COLEMAN* RULES-**
VIOLATION EVALUATION PROCESS.

13 Presently, the Chief Disciplinary Officer and DDP clinician consult after the findings and
14 disposition of a rules-violation hearing have been issued, but before disciplinary action is taken.
15 The parties have determined that the better course of action is to follow the newly instituted rules-
16 violation process developed in *Coleman v. Brown* (2:90-cv-00520 KJM DAD PC), attached to
17 this stipulation.

18 Under the revised process, inmates in the DDP who are alleged to have committed a rules
19 violation shall receive a mental health assessment, noted on a CDCR Form 115-MH-A, Rules
20 Violation Report: MH Assessment Request. This mental health assessment incorporates clinical
21 input into the disciplinary process when cognitive or adaptive functioning deficits may have
22 contributed to behavior resulting in a rules violation. Mental health assessments shall be
23 considered by the hearing officer or other official during the disciplinary proceedings when
24 determining whether and how to discipline an inmate. The new process also provides
25 mechanisms to mitigate discipline, allows for alternative forms of documenting inmate behavior,
26 and excludes certain behaviors from Rules Violation Reports.

27 The parties agree to amend the Remedial Plan to eliminate the post rules-violation
28 consultation between the Chief Disciplinary Officer and DDP clinician, and to use the attached

1 rules-violation review process, effective on the date of the Order approving the parties'
2 stipulation.

3 The parties have also agreed to revise the Rules Violation Report policies, procedures, and
4 staff training to reflect the above revision to the Remedial Plan. CDCR will implement the
5 following:

- 6 a. Revised Title 15, Sections 3310(d), 3315(h), 3317, 3317.1, 3317.2 (Attachment 1; in
7 draft form);
8 b. Revised Departmental Operating Manual Section 52080.5.8 (Attachment 2; in draft
9 form); and,
10 c. Revised Mental Health Assessment Form (115-MH-A) (Attachment 3).

11 **STIPULATION**

12 Defendants and Plaintiffs stipulate to the above.

13
14 Date: December 16, 2015

/s/Danielle F. O'Bannon
DANIELLE F. O'BANNON
Supervising Deputy Attorney General
Office of the California Attorney General
Attorneys for Defendants

15
16
17
18 Date: December 16, 2015

/s/Sara Norman
SARA NORMAN
Prison Law Office
Attorneys for Plaintiffs

19
20 It is so ordered.

21
22 Dated: December 21st, 2015


United States District Court

23 CF1997CS0006
24 90597907.doc
25
26
27
28

1 As required by Local Rule 5-1, I, Sharon A. Garske, attest that I obtained concurrence in
2 the filing of this document from Sara Norman and that I have maintained records to support this
3 concurrence.

4
5 DATED: December 16, 2015

KAMALA D. HARRIS
Attorney General of California
DANIELLE F. O'BANNON
Supervising Deputy Attorney General

/s/ Sharon A. Garske
SHARON A. GARSKE
Deputy Attorney General
Attorneys for Defendants

CERTIFICATE OF SERVICE

Case Name: Clark v. State

No. C 96-1486 CRB

I hereby certify that on December 16, 2015, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

STIPULATION AND [PROPOSED] ORDER RE: REVISIONS TO REMEDIAL PLAN;
ATTACHMENTS 1-3

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 16, 2015, at San Francisco, California.

D. Criswell

Declarant

s/ D. Criswell

Signature